1944. **K** Legal **DEPARTMENT**

Examined — **BRANCH**

Subject:—

Appeals to the Bombay Revenue Tribunal from Belgaum District.

" True copy - Original papers being of bad quality" - Destroyed."

Superintendent,
D Branch, Legal Department.

File No. B.R.T.A. Bel./44

Std. Scott. Slip 24-B

352-A.

15

Memorandum of Instructions

This relates to an appeal before the Bombay Revenues Tribunal from an order of the Collector of Belgaum. The appellant was the licensee of a country liquor shop. Such shops have a fixed annual ration fixed by the Collector and it is within the discretion of the Collector to allow any licensee a further ration on payment of such additional fee as the Collector may prescribe, (vide auction Condition 20, page 94, File I). The appellant in this case was granted such further rations by the Collector at a certain fee. Later on however it was represented to the Collector by the Superintendent of Excise that the fee charged for the extra rations was less than that was prescribed by departmental circulars. Thereupon the Collector made the order now in appeal ordering the appellant to pay a certain amount by way of the difference between the fee that was charged and the correct fee that should have been charged. The appellant preferred the present appeal to the Commissioner, Southern Division who purporting to act under section 8 of the Bombay Revenue Tribunal Act XII of 1939 placed it before the Tribunal for decision. The Tribunal requested the Government to put in a written statement. The Government asked the Commissioner of Excise to submit a draft written statement. The Commissioner of Excise came to the conclusion that the Collector's order was indefensible and further pointed out that the power to hear the appeal vested in him under section 60 of the Bombay Abkari Act rather than in the Tribunal. Thereupon Government informed the Tribunal that it did not intend to put in a written statement, but at the same time raised the question of the jurisdiction of the Tribunal. The Tribunal have now fixed the appeal for hearing, and the sole question is about the said jurisdiction.

2. Under section 4(1) and (2) of the Bombay

Revenue Tribunal Act the jurisdiction of the Tribunal is confined to the power exercised by the Provincial Government on 1st April 1937. Under section 60 of the Abkari Act, which is one of the enactments mentioned in the Schedule to the Bombay Revenue Tribunal Act in respect of which appeals may lie to the Tribunal, a Collector's order ~~order~~ is appealable to the Commissioner but there is no further appeal to the Provincial Government from an order passed by a Commissioner on appeal. Therefore in respect of a Collector's order, there was, on 1st April 1937, no appellate jurisdiction in the Provincial Government which could be exercised by the Tribunal under section 4(1) and (2) of the Bombay Revenue Tribunal Act. Therefore in the present case the Tribunal has no jurisdiction to hear the appeal.

3. Section 60A of the Abkari Act which was enacted by Bombay Act XV of 1941 and which came into force on 22nd October 1941, conferred revisional jurisdiction on the Provincial Government similarly to section 211 of the Bombay Land Revenue Code. This power of the Provincial Government did not exist on 1st April 1937, but under section 4(3) of the Bombay Revenue Tribunal Act it is open to the Provincial Government, by notification in the official Gazette, to transfer it to the Tribunal. As no such notification has issued uptil now, ~~the Tribunal~~ cannot now the Tribunal cannot exercise jurisdiction under section 4(3) of the Bombay Revenue Tribunal Act also.

4. It is suggested (by the Commissioner, Southern as member of the Tribunal): (a) that orders passed by a Collector are appealable to the Commissioner, (b) that under section 3(3) of the Abkari Act the ~~x~~ term 'Commissioner' primarily refers to the Revenue Commissioner and (c) that this appeal having been preferred to the Commissioner, Southern Division, the Tribunal has jurisdiction under section 8 of the Bombay Revenue Tribunal Act. It is here not clear what (c) means or how it follows upon (a) and (b). Under section 2 of the Bombay Revenue Tribunal Act a "Commissioner" would include a Commissioner of Excise. Under section 8 of the Act no appeal would lie to a Commissioner in any case in which

any case in which an appeal lay to the Tribunal. Conversely, an appeal would lie to the Commissioner in any case in which it does not lie to the Tribunal. An appeal under section 60 of the Abkari Act read with section 8 of the Bombay Revenue Tribunal Act may lie either to the Revenue Commissioner (as has been suggested) or to the Commissioner of Excise in a case in which the Tribunal had no jurisdiction. It is presumed that appeals from Collector in Excise matters are normally heard by the Commissioner of Excise; But that practice of itself would not make illegal the presentation of an appeal to a Revenue Commissioner. Further an appeal so presented to the Revenue Commissioner can properly be transferred by that officer to the Commissioner of Excise for disposal, [There is an apparent conflict between the two Commissioners,] but the Tribunal is in no way involved. It appears to be the idea in (b) and (c) that because in this case the presentation of the appeal to the Commissioner, Southern Division was not illegal, ~~x~~ it was proper for that officer who is a member of the Tribunal to place the appeal before the Tribunal for disposal. There is nothing in section 8 of the Bombay Revenue Tribunal Act to support the idea. The suggestion is probably due to a misapprehension of the decision in the Tribunal's Case No.971 (O/126). That decision has therefore to be examined now.

5. In case No. 971 (O/126) the Tribunal was considering an appeal from an appellante order of the Commissioner of Excise. The argument for the Government was twofold.: on the ground of jurisdiction and on the ground of limitation. If the Commissioner had the power to hear the appeal, it was contended, a second appeal to the Provincial Government and consequently to the Tribunal did not lie; on the other hand if no ~~hand if~~

if no appeal lay to the Commissioner under section of the Bombay Revenue Tribunal Act, the proceedings before him were void, the appeal before the Tribunal would have to be deemed to be one from the Collector's order, and as such was barred by limitation. The Tribunal accepted the defence about its own want of jurisdiction. That means it admitted that the order of the Commissioner of Excise in appeal from the Collector's order was lawful. If that decision is to be applied to the present appeal it would be for the Commissioner of Excise and not the Tribunal to dispose of it. The Tribunal itself in that decision recognised that "during the 3 years and more of its existence appeals from the Collectors in Excise matters have continued to be made to the Commissioner of Excise and not to the Tribunal." There is nothing in the order of the Tribunal to suggest that in its view that practice was illegal and should be discontinued. It is true that, as observed by the Tribunal, the language of sections 2, 4 and 8 of the Bombay Revenue Tribunal Act is apt to mislead, but it is equally clear that there is no contradiction so far between the provisions of the Bombay Revenue Tribunal Act and those of the Abkari Act, The position briefly is that in Excise matters an appeal from a Collector's order would lie to the Commissioner of Excise and then there might be revision by the Provincial Government; an original order of the Commissioner of Excise would be appealable to the Tribunal and in such a case the Commissioner of Excise clearly cannot himself be a member of the Tribunal. In Case No. 971 aforesaid the Tribunal had not to consider the effect of the new section 60A of the Abkari Act. But it has been pointed out above that section 60A has not so far increased the jurisdiction of the Tribunal. The Tribunal may therefore be requested to apply its own decision in Case No.971 and hold with regard to the present appeal that it has no jurisdiction.

6. The Assistant Government Pleader, High Court, may be asked to appear and argue the appeal before the Tribunal on 6th October 1944 in the Council Hall at Poona ~~on the lines~~

on the lines of the above. The facts are sufficiently stated above for the purpose of the argument as to jurisdiction, and no papers or records need be sent to the Assistant Government Pleader.

11.8.5

D.S. A s suggested in para 6.

11.N.K.D
9/8/44

11.P.N.M
10.8.44

Office of the R.L.A. 7/4

The Government Pleader, High Court, Bombay has been requested to instruct the Assistant Government Pleader, High Court to appear before the Tribunal and oppose the appeal on the date fixed on the lines of the accompanying Memorandum of Instructions. A copy of the letter to the Government Pleader, High Court, Bombay No. 5721 dated 15th August 1944 is enclosed.

It is not necessary to forward any papers or records to the Government Pleader, High Court, Bombay.

dr

O/C
for Remembrancer of Legal Affairs.

Issued 18/8

U.R. to Revenue Department No. 5722 dated 15th August 1944.

A letter to G.P. H.C. and a ur. to R.D are submitted for signature.

14/8 P.A dr 14/8

Letter.

No. 5721

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 15th August 1944.

To

The Government Pleader,
High Court, Bombay.

Subject: Appeal to the Bombay Revenue Tribunal by Mr.G.G. Jamadar, against the order of the Collector of Belgaum, requiring the appellant to pay extra licence fee of Rs.423-4-6 in respect of extra rations.

With reference to the subject noted above, I have the honour to state that the appeal has been fixed for hearing at 11 A.M. on Friday the 6th October 1944 in the Council Hall, Poona. I am to request you therefore to instruct the Assistant Government Pleader, High Court, to appear before the Tribunal on the said date and argue the appeal on the lines of the accompanying Memorandum of Instructions.

for Remembrancer of Legal Affairs.

Recd C&P 15/8

K-1.

22/10 Submitted after issue
file in BRTA/Bel/44.

2 QR
16/8

P.A.

16 | 8